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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/621,860      | 07/16/2003  | Andrew R. Weisenberger | 062373              | 1759             |

38834 7590 10/15/2008  
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| EXAMINER |
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FRANK, RODNEY T

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2856

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| MAIL DATE | DELIVERY MODE |
|-----------|---------------|

10/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/621,860             | WEISENBERGER ET AL. |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | RODNEY T. FRANK        | 2856                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5-11,13-18,27-30,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-11,13-18,27-30,35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-11, 13-18, 27-30, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rynhart et al., in view of Skidmore et al.

3. Rynhart et al. (U.S. Patent Number 6,340,892; hereinafter referred to as Rynhart). Rynhart discloses that a moisture meter (1) includes an LCD display (8) driven by a digital microcontroller (50) which generates digital moisture reading data. Readings are stored as discrete records in files. The microcontroller (51) stores a library of material data and automatically compensates signals from a capacitive/impedance sensor circuit (51) according to both stored material parameter values and sensed temperature. Users may edit the parameter values. A non-removable cover (4) is used at the final stage of production to configure the meter for the nature of interfacing (such as serial port interfacing) required (Please see the abstract). Rynhart discloses a meter/sensor that is capable of measuring the moisture content of various structures. Rynhart also discloses that the data obtained by the sensor can be printed out via Microsoft Suite (i.e. Excel) software. While this would give us a printout of the moisture content data, there is no specific teaching of utilizing such data as a certificate given for reporting results of a home inspection. Skidmore et al.

(U.S. Patent Application Publication Number 2003/0040934; hereinafter referred to as Skidmore) discloses a system directed to the automated generation of a home inspection report according to home inspection information gathered from a home inspector during the inspection of a home. The disclosure is directed to the subsequent creation of a home warranty insurance policy created according to the home inspection information so that a customized home warranty inspection policy based upon the home inspection information is provided (Please see the abstract). Skidmore discloses in paragraph [0020] that the interior of a building is measured during a home inspection and the data from these measurements is recorded and stored. The examiner would like to point out that the interior of a structure would include the ceilings, floor, walls, and other key areas of interest in a room. Further yet, the examiner would like to point out that while the prior art does not explicitly teach taking measurement around a door frame or window frame, it would be obvious to one of ordinary skill in the art to test for moisture levels around these areas since they are a likely source of potential moisture intrusion. Paragraph [0019] specifically addresses that instead of a whole inspection, only certain aspects, such as moisture issues, can be addressed and tested. Paragraph [0001] discloses that the data obtained can be formatted into a report and paragraph [0008] specifically discloses the ability to have data turned into a specific format, such as a form/certificate.

4. In regard to claims 1, and 11, Rynhart discloses a method and system for certifying at least a portion of structural components of an interior of a structure relative to moisture content, comprising the steps of: measuring moisture content levels within

structural components of said portion of the interior of the structure; and providing data and results regarding moisture content level measurements. Figure 10, for example outlines the various types of wood, wall materials, and roofing materials that can be measured. However, the data that can be produced by Rynhart is not specifically referred to as a "certificate".

Upon reading the specification in order to gain a better insight as to what the "certificate" being issued meant, it is determined that the certificate is a document or report that is given upon the completion of a moisture test to determine whether a particular structure passed or failed the test based upon given parameters (page 2 line 33 through page 4 line 3 of the applicants specification, for example). In the Rynhart reference, moisture content is determined (see column 1 lines 25 and 26) for structural components of the interior of a structure (see column 2 line 65 through column 3 line 2). Then, since the certificate is a document that gives information regarding the results for the moisture test, Rynhart discloses beginning in column 6 with line 66 and continuing through column 7 line 2 discloses the use of Microsoft Office software can be used to obtain the generated data. Skidmore specifically address the ability to translate home inspection data obtained into a usable format, such as a report or certificate of compliance or failure, based upon the results obtained. As discussed earlier, the Rynhart reference makes measurements, but it does not disclose doing anything very useful with the information. Therefore, one would be motivated to modify Rynhart by giving a method of making the Rynhart data useful, as disclosed in Skidmore. In the home inspection method disclosed in Skidmore, a method of obtaining various

measurements during a home inspection to produce a report or certificate with relation to findings of moisture content is disclosed. Therefore, it would be obvious at the time of the invention to utilize Rynhart as a device to make measurements during a home inspection such as to obtain moisture data and utilizing said obtained data in the method of disclosed in Skidmore in order to obtain a certificate reporting the results of said moisture measurements.

In reference to claims 5-9, 14-18, 27, and 28 though the specific structure under test is not specifically disclosed in Rynhart, the reference discloses in column 1, lines 1 through 18 that the device is used for surveying and it has an advantage of being used in environments such as attic spaces. Since an attic is usually associated with a house and surveying is also used, amongst other things, during home inspection, the terminology used would refer to a structure that would meet the description of a "building". However, in view of the Skidmore reference being specific to home inspection and paragraph [0020] of Skidmore disclosing similar items of interest as Rynhart to be measured, then the use during a home inspection is viewed as obvious to one of ordinary skill in the art.

In reference to claims 10, 13, 29, and 30, though the specific percentage value that is desired is not specifically disclosed, official notice is taken that the percentages used to determine the moisture compliance or failure is a well established parameter in the building industry as the percentage of moisture content that can produce mold is found in many documents relating to home inspection and building. For example, an article from the Department of Wood and Paper Science; Housing and Clothing at the

University of Minnesota entitled "Testing Housing Materials for Moisture" it states that if moisture content is measured to be less than 10%, then there is no need to worry, while a reading above 20% could indicate a serious moisture problem (this can also be found on line at the following internet address: <http://www.extension.umn.edu/info-u/household/BK270.html>). Therefore, these percentage parameters are viewed as knowledge well within the preview of one of ordinary skill in the art.

In reference to claims 35 and 36, the issuance of any compliance or failure criteria would be a part of a home inspection and during said inspection, moisture content levels are measured and an assessment of compliance or failure is determined and reported. This inspection method and means is disclosed in the Skidmore reference, and thus the issuance of a certificate is deemed to be disclosed as well.

### ***Response to Arguments***

5. Applicant's arguments filed 08 May 2008 have been fully considered but they are not persuasive. The applicant has submitted a 7 page response to the office action dated 08 February, 2008. The applicant first argues that the reinstatement of the Rynhart reference is without merit since the applicant argues said reference in a response filed February 13<sup>th</sup>, 2007. The applicant next argues that the Rynhart reference does not teach the claimed subject matter of independent claims 1 and 11, and third argues that the Skidmore reference does not disclose the claimed subject matter of claims 1 and 11. These arguments are not persuasive.

6. With regard to the reinstatement of the Rynhart reference, the applicant would like to point out that in the office action dated 14 August 2006, the examiner rejected the

claims based upon the Rynhart reference alone under 35 U.S.C. 103. In the response dated February 13, 2007, the applicant amended the claims to include the limitations of making measurements about various portions of the interior of a structure such as a window frame, door frame, etc. Thus, the Rynhart reference was applied alone as a reference to different claims than presently presented. In contrast, the examiner has currently applied a combination of references, said combination being Rynhart further in view of Skidmore. Thus, as a combination of references is used, this rejection is actually a completely different rejection than the one that was responded to in February of 2007, and thus cannot be viewed as "without merit" as stated on page 3, in the second paragraph of the response. This new rejection utilizing a combination of references should be viewed as a new rejection of the claims and simply approaching the present rejection utilizing a combination of references as the same rejection as a single reference alone is inappropriate on the part of the applicant. For at least this reason, the applicant arguments are not persuasive.

7. With regard to the arguments of the Rynhart reference individually, as seen on pages 3 through 5 of the arguments, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). With this in mind, the applicant argues that Rynhart is not concerned with the features of claim 1, namely measuring a plurality of moisture content levels within said interior portion of the structure; determining if each of said plurality of moisture content levels is within a desired level; and issuing a moisture



level compliance certificate if the result of said determining step is that each of said plurality of moisture content levels is below the desired level; wherein said measuring step includes taking measurements of said moisture content levels around at least one window frame and at least one door frame, and along at least one floor, at least one wall and at least one ceiling, all of which are included within said interior portion of said structure, Rynhart discloses that he has a device that can take measurements of moisture content, said measurements being made for a variety of materials as disclosed in figure 10 of Rynhart. The materials indicated are various woods, walls and wall materials such as plaster, brick, or drywall, and roofing material. The examiner submits that one of ordinary skill in the art at the time of the inventions would be able to utilize the Rynhart device to make measurements on the inside of a structure. Since most buildings are wood frame buildings wherein a said wood frame is covered on the interior by plaster and drywall in order to make up the walls and rooms of a building, then the indication of the measurements of moisture content of such materials in the Rynhart reference makes it of particular relevance to the presently claimed invention. Further still, with respect to making such measurements at particular points such as window and door frames, ceilings, floors, etc., the applicant has not shown anywhere in the specification where these measurements are not a typical measurement process known in the art. In other words, there is no disclosure of any new method of performing moisture measurements for a home inspection, simply a method of taking these measurements and presenting them in a particular format of a compliance certificate. Thus, the measurement points would be obvious to one of ordinary skill in the art at the

time of the invention, specifically since any openings such as a window or door would be of particular interest since they would be a prime location for possible moisture intrusion. The Rynhart device is very similar in operation and function to the MMS Plus Moisture measurement system which has disclosed to be used in the present specification of page 4 as well as disclosed by the applicant to be used per the demonstration during the personal interview with the examiner on 25 July of 2006. The examiner sees the Rynhart reference as a functional equivalent to the GE MMS Plus meter disclosed by the applicant. However, it is not obvious to one of ordinary skill in the art to utilize a device for its intended purpose of making moisture measurements is not clear to the examiner. Further, the applicant's disregard of what is taught by the combination of the references causes the arguments to not be persuasive.

8. With regard to the arguments of the Skidmore reference alone, as presented on pages 6 through 8 of the present arguments and response, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). With this in mind, Skidmore is a specific system of providing a home inspection and home warranty, said inspection specifically includes the performance of a moisture level evaluation (see paragraph [0019]). A database of all home inspection components is stored and a final report is generated with results of all tests performed, which would include the moisture level measurements (see paragraph [0001] and figures 1-3). In fact, the warranty issued by the system of Skidmore, item 32 of figure 1, is depicted in the form of a

certificate. The applicant has erroneously simplified the Skidmore disclosure as simply performing an inspection of the foundation of the home. This is evidenced by the arguments on page 7 of the response whereby the applicant argues that Skidmore clearly fails to disclose or suggest that the foundation inspection includes the claimed measurement steps. The applicant goes on to further state that Skidmore actually teaches away from one making measurements for moisture content on the interior of a structure. The examiner respectfully disagrees. The Skidmore reference discloses moisture measurements being taken as part of a home inspection. The examiner submits that one of ordinary skill in the art would be motivated to take moisture measurements around various parts of a home where moisture and mold issues are relevant. With this in mind, since Skidmore discloses making measurements to the interior of the structure, then one of ordinary skill in the art would know to make the measurements around all the particular points of interest, and thus Skidmore is of particular relevance to making such measurements for a home. The applicant does acknowledge on page 7 of the response that Skidmore does disclose obtaining information with respect to the interior of rooms in a house, the floors, walls, and ceilings. How the applicant can argue that this inspection would not include moisture of the same area when that is considered a part of a standard home inspection is not clear to the examiner. Further, paragraph [0023] specifically discloses a determination performed by a home inspector of the compliance of various aspects of the home inspection, one of said aspects being moisture level measurements. Again, as pointed out above, since the applicant is making no claims to providing any new or novel

inspection method, then the points of the interior of the home would be understood to be measured for moisture content levels. With this in mind, the arguments against Skidmore alone are not persuasive.

9. Finally, on page 8 of the response, the applicant argues that the combination given would not give the claimed subject matter. The examiner disagrees. Rynhart discloses a device for making moisture level measurements and storing the data to be downloaded and possibly printed in order to show the results, the Rynhart reference disclosing a number of materials which can be tested for moisture content. Rynhart fails to disclose, however, how the data is used other than downloading and providing results or for what specific purpose or application the device can be used when taking said measurements. Skidmore provides an overall system and method for providing a home warranty via a home inspection and reporting the results of said inspection, said results being generated and compiled into a home warranty certificate or policy reporting the findings of said home inspection tests, one of said tests being a moisture content measurement for various portions of a house, including the interior of rooms, ceilings and walls. Thus it would be obvious to one of ordinary skill in the art to utilize the Rynhart device to perform said moisture measurements and then utilizing the method disclosed in the system of home inspection of Skidmore to make the data from the Rynhart reference useful by providing the information and data obtained by the Rynhart device into a useable report of home inspection.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RODNEY T. FRANK whose telephone number is (571)272-2193. The examiner can normally be reached on M-F 9-5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. T. F./  
Examiner, Art Unit 2856  
October 19, 2008  
/Hezron Williams/  
Supervisory Patent Examiner, Art Unit 2856